Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

COMMENTS OF BELLSOUTH

BellSouth Corporation
BellSouth Telecommunications, Inc.

Stephen L. Earnest
Richard M. Sbaratta

Their Attorneys

BellSouth Corporation
Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375-0001
(404) 335-0724

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TABLE OF CONTENTS

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COMMENTS OF BELLSOUTH

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby file the following reply comments in response to the Notice of Proposed Rulemaking, FCC 00-229, released November 9, 2000 ("*Notice*"), requesting comment on proposed modifications to the ARMIS Report 43-05 Service Quality Report and the ARMIS Report 43-06 Customer Satisfaction Report.

I. Introduction and Summary

The Commission should eliminate the ARMIS reports 43-05 and 43-06 related to service quality. As BellSouth discussed in its comments, these reports are no longer necessary and serve no public interest. Nothing in the comments supports an argument otherwise.

The parties filing comments in this proceeding that opposed elimination of the ARMIS service quality reports based their arguments on improper and irrelevant information. Clearly, the ARMIS reports 43-05 and 43-06 are no longer used for their original purpose – to measure the LECs' quality of service in a price cap environment. The *Notice* even acknowledges that the continued reporting should shift its focus from gauging whether the price cap LECs will allow

service degradation in a price cap environment to providing customers information for making choices in a competitive market.[1] This reasoning undermines the purpose of the Biennial Review section of the Telecommunications Act of 1996 ("1996 Act"). The Commission should not be looking for ways to continue to use outdated regulation, but should determine whether such regulation is necessary; if it is not, then it should be repealed. While several commenters proposed reasons for continuing the reporting, none of these reasons stand up to the Commission's requirements under the 1996 Act.

II. The Comments Do Not Support Continued Service Quality Reporting

A. CLEC Comparisons

Several competitive local exchange carriers ("CLEC") proposed to continue the existing reporting suggesting that it will help them monitor the quality of service they receive in a wholesale environment. The CLECs specifically argue that reporting of interexchange carrier ("IXC") special access measurements in ARMIS 43-05 will help them in determining whether they have problems with their special access. For example, ALTS states that "the CLECs ability to point to ILEC service degradation recorded in the existing wholesale IXC special access measures helps to strengthen CLEC complaints regarding the special access provisioning backlogs CLECs currently experience." This argument hinges on the fact that reporting of retail service issues will somehow help the CLECs judge if they are receiving inferior or non-discriminatory service from the ILECs. Such a vague comparison, however, cannot be made.

[1] Despite the claims made by some commenters, *see e.g.*, Communications Workers of America ("CWA") at 6, it is questionable whether reporting the streamlined version proposed in the *Notice* would provide any significant information or be of any real value to consumers. *See* USTA Comments at 2; *see also*, discussion *infra* regarding CLEC reporting.

First, if the CLECs are suggesting that the same personal and operations that ILECs use to provision special access for IXCs is used to provision CLEC unbundled network elements ("UNE"), this is simply not true in BellSouth's case. BellSouth does not use the same provisioning systems or employees to provision UNEs as it does to provision IXC special access. These are separate services within BellSouth. Thus, any attempt to compare the service quality of IXC special access to obtain conclusions about CLEC UNEs is improper. Second, if the comparison is truly intended to suggest that ILECs continue to report service quality for IXCs so that CLECs may attempt to draw conclusions about the special access services they obtain, this argument is far-fetched. CLECs should clearly know when they are not receiving the quality of service they expect. They have avenues open to them to correct such alleged inadequacies. It is completely inefficient and unfair to require an entire class of carriers to continue reporting information that should be addressed by individual companies. This is nothing more than a transparent attempt by the CLECs to have ILEC to continue regulation for regulation sake.[2]

B. Meaningful Competition

Many commenters argue that the reports should be maintained because there is no meaningful competition and therefore the requirements of Section 11 of the 1996 Act had not been met. These entities point to only one item to support these claims – that some yet to be disclosed figure of market share loss is necessary before any competition exists. The Commission, however, should not rely completely on market share loss for making decisions on

[2] As USTA notes, special access tariffs and interconnection agreements of most ILECs contain provisioning intervals. Moreover, BellSouth provides a Service Installation Guarantee for most of its special access services in which BellSouth will forgo applicable nonrecurring charges if it fails to meet a customer's service date. The arguments of AT&T and others notwithstanding, these parties fail to establish a reason let alone a need for service quality reporting in the ARMIS reports.

forbearance and biennial review deregulation.[3] Indeed, even in determining whether a carrier is dominant or non-dominant, market share has been only a factor in the analysis, and has never been seen as an essential factor.[4] Other factors demonstrate that competition is present and growing each day. Evidence of this is shown by the fact that BellSouth has entered into more than 300 interconnection agreements with CLECs. If market share loss is the only method to determine whether competition exists, why does the Commission keep up this charade of a biennial review? Moreover, why did Congress not include a percentage in the statute? Loss of market share cannot be the only measure of competition. Congress did not intend it nor has the Commission depended on it in the past.

C. New Reporting Requirements, Including Broadband

It is unsurprising that several entities filing comments seized upon the *Notice's* request for comments regarding reporting for broadband services.[5] Covad even argued that the Commission should go beyond the proposals in the *Notice* for additional reporting of broadband and require ILECs to file reports for wholesale services as well as retail services. As BellSouth argued in its comments, imposition of additional regulatory burdens are beyond the scope of a Section 11 biennial review.[6] The Commission even acknowledged this position recently in its

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[3] *See e.g.*, AT&T Comments at 5; Competitive Telecommunications Association, e-spire Communications, Inc. KMC Telecom, Inc., Net 2000 Communications, Inc., XO Communications, Inc. and Z-Tel Communications Inc. ("Joint Commenters") at 10; Communications Workers of America ("CWA") at 3;

[4] *AT&T v. FCC*, 2001 WL 50466.

[5] *See* EarthLink, Inc. Comments at 2; Focal Communications Corporation ("Focal") Comments at 4; General Services Administration ("GSA") at 10;

[6] *See* other comments in support of not expanding scope of proceeding, Independent Telephone & Telecommunications Alliance at 5 (Section 11 does not permit the creation of new reporting requirements); AT&T Comments at 4.

2000 Biennial Review Report. While the Commission stated that it was not prohibited from the expanding the scope of the review for other matters, it specifically stated:

> Similarly, when it reviews its rules and considers competitive developments pursuant to the biennial review requirements, the Commission may consider whether new, less burdensome regulations are more appropriate. For example, in some instances, the process of repealing or modifying regulations may necessarily involve the creation of new, less burdensome regulations, such as if we were to decide that we should eliminate burden of proof requirements for a party seeking approval of an activity, but may impose new, less burdensome obligations requiring the party to file periodic status reports. *Thus, as a part of the biennial review process, we do not intend to impose new obligations on parties in lieu of current ones, unless we are persuaded that the former are less burdensome than the latter and are necessary to protect the public interest.*[7]

The Commission has never required reporting on broadband services in ARMIS as suggested by the *Notice*, nor has it required reporting on all wholesale services as suggested by Covad.[8] Obviously, adding new reporting requirements, where none existed in the past, cannot possibly be less burdensome. Therefore, proposals for new services must not be allowed in this proceeding.[9]

The entities supporting this proposal are for the most part providers of broadband services themselves. These entities are all well aware that broadband, while expanding in

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[7] 2000 Biennial Report ¶ 19.

[8] ARMIS report 43-05 does include information on special access services to an IXC, which wholesale service. Covad, however, wants to expand the reporting to all wholesale service.

[9] The same argument applies to the proposals for increased reporting set forth in the NARUC White Paper referenced in the *Notice*. BellSouth is especially opposed to the response time and answer time performance reporting suggested in Section III of the White Paper. Providing this information would be extremely burdensome. Moreover, adding such requirements would not be on place of or reduce existing requirements. Such additions would therefore clearly violate Section 11 of the 1996 Act standard established in the 2000 Biennial Report.

growth, is still a nascent market with no dominate provider. Indeed, cable companies enjoy more customers than do ILECs or CLECs. The request to report this information is a transparent attempt to gain competitive information. It should not escape the Commission's attention that many of the same CLECs that support ILECs reporting this information are adamantly opposed to CLECs reporting such information.

As ITTA discussed in its comments, "under Section 706 of the 1996 Act, the Commission has a discrete statutory duty to report to Congress the deployment of broadband Communications technology."[10] To fulfill that duty the Commission established a broadband report. In that report the Commission saw no need to include service quality reporting in order to fulfil its statutory requirement. The Commission cannot circumvent that finding in a biennial review proceeding.

Finally, ALTS argues that this reporting is needed because "CLECs offering such services as xDSL-based service depend on the ILEC for CLEC customer installation."[11] If this is the standard, then ILECs will have to report this information forever. It is now five years since the passage of the 1996 Act and few CLECs have made any effort to build their own facilities. Instead, many are content in using ILEC facilities to provide their services. The continued use by CLECs of ILECs facilities cannot become the standard upon which the Commission determines to continue existing regulation or expand new regulation. To the contrary, the Commission must follow the mandate of the 1996 Act.

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[10] Independent Telephone & Telecommunications Alliance ("ITTA") Comments at 12.

[11] ALTS Comments at 11.

D. Timing of Reports

The *Notice* requested comments on whether the service quality reports should be reported more frequently than annually. ALTS and EarthLink urged the Commission to collect the reports quarterly, while Focal suggested semi-annually or quarterly.[12] Not only is expanding the timing of the reports an unnecessary expansion of regulation, as discussed by ITTA and USTA, such a requirement would violate section 402(b)(2) of the 1996 Act. ITTA's assessment is accurate that the Commission cannot avoid the clear letter of the law by merely moving the reporting out of ARMIS. Even if the Commission continues the service quality reporting, which it should not, it must follow the 1996 Act and only require it on an annual basis.

E. States Need for Information and Uniform Reporting

Many of the state public service commissions ("PSC") that filed comments argued that they continue to need ARMIS service quality reports in order to monitor the quality of services that ILECs offer in their states. Florida, for example, suggests that the elimination of the reports may be "premature," while Wyoming argues strongly for the continued reporting citing its need of the reports for PSC regulatory oversight. These positions, however, overlook the fact that each state PSC, at least in the BellSouth region, has established its own unique set of service requirements that it deems necessary for its particular jurisdiction. Even if a PSC has not established such requirements, it certainly has the authority to do so. Considering that service quality for local services is under the jurisdiction of the PSCs, who collect such data or have the authority to collect such data as needed, there is no federal need to report data that is only required by some states. Indeed, it has been BellSouth's experience that the PSCs request data as

[12] ALTS Comments at 15; EarthLink Comments at 4; Focal Comments at 5.

needed regardless of the federal requirements. The federal rules are the regulatory equivalent of piling on. [13]

Local service quality is an issue that is within the jurisdiction of the state PSC.[14] If the PSC perceives a service quality problem, as some comments suggest has recently occurred,[15] the PSC should address this issue within the state and not seek to have a federal reporting system for local matters. Trends in local providers' services can be determined from prior data submitted by the carrier in question to the PSC. Data from another service providers, who do not serve customers within the state, is not relevant to the PSC's determination that the service of a particular provider in the state is deteriorating.

AT&T contends that reports should continue[16] because there is no substitute for the information and it poses no significant burden on the ILECs. This, of course, is not the standard of a Section 11 review. Even if AT&T's contention was true, which it is not, it is irrelevant to the determination of continuing the reporting requirement. The Commission must make a

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[13] The Office of Management and Budget ("OMB") contends that "[i]f, State Public Service Commissions will have difficulty carrying-out their oversight function without these reports, then they and other Commissions might be forced to impose their own reporting requirements on the LECs. Such requirements will run a high risk of being unique to each State Commission, and result … with the net effect of a greater burden on the LECs." OMB Comments at 2. The states have had different reporting requirements for several years. The burden therefore already exists. To lessen the burden the Commission should eliminate the ARMIS reports.

[14] *See* Sprint Comments at 1; USTA Comments at 2 – 3; Illinois Commerce Commission Comments at 4 ("quality of service provided to consumers of local telecommunications services is essentially local in character and has historically been regulated by the States as part of their police power.")

[15] *See* IURC Comments at 1; Texas Office of Public Utility Counsel Comments at 5.

[16] AT&T does not oppose the elimination of Table III of ARMIS Report 43-05 and ARMIS Report 43-06, AT&T Comments at 2, and its discussion of continued ARMIS reporting does not include continuing to provide these ARMIS reports.

determination of whether the reports are no longer necessary in the public interest as the result of meaningful competition. BellSouth is confident that if the Commission truly analyses the number of competitive carriers and the availability of services they are providing, it will determine that the reports should be eliminated pursuant to Section 11. Regardless of the Commission's view of competition, however, continuing to require the reports simply because it may make the information more easily assessable or because they pose no significant burden on the ILECs – both if which BellSouth disputes – would clearly violate Section 11.[17]

An equally inappropriate reason for continuing the ARMIS service quality reporting requirements is the suggestion that the information is needed to monitor merger conditions of various large ILECs.[18] Once again, the conditions of the merger of two companies have nothing to do with whether the reporting requirements for all price cap ILECs remain necessary pursuant to Section 11. The Commission should not burden those ILECs not party to a merger with continued reporting requirements for the sake of monitoring those carriers that were a parties to the merger.

F. CLEC Reporting

Numerous parties commented about whether all carriers providing services, ILECs and CLECs, should be required to provide ARMIS service quality reports. BellSouth actually agrees with the CLECs on this matter, however, not for the same reasons. On the one hand, as BellSouth stated in its comments, a Section 11 biennial review is not a proceeding that the Commission should be adding regulation.[19] On the other hand, the CLECs argue that CLEC

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17 *See also* Qwest Comments at 8.

18 *See* Texas Office of Public Utility Counsel Comments at 7 – 10.

19 *See* discussion supra regarding the scope of a Section 11 proceeding.

reporting should not be required because it will overburden CLECs' business cases and that because CLECs obtain a significant portion of their services from ILECs, the reporting of quality problems could confuse consumers unless the source of the problems was also reported. BellSouth sympathizes with the overburden claims made by the CLECs. Indeed, BellSouth agrees that all off the reports are unnecessary and overly burdensome and should be eliminated. The other claim is typical ILEC bashing hyperbole by the CLECs and has no merit.

Some PSCs and other entities contend that CLECs should report service quality information in order to allow consumers the ability to compare the information of all carriers. CWA, for example, states that uniform reporting by all carriers is needed to provide consumers a uniform standard to compare different carriers.[20] BellSouth agrees that in order to have any meaningful comparison for consumers, all potential carriers must provide information. Otherwise the reports are useless for consumers comparison.[21] The answer, however, is not to require CLECs to report the information but to eliminate it all together and allow consumers to choose based on their satisfaction of the service they are receiving.

II. Conclusion

The time has come for the Commission to apply Section 11 of the 1996 Act as Congress intended it. The *Notice* has proposed such an application for ARMIS report 43-06. BellSouth

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[20] CWA Comments at 24 – 25. *See also*, Indiana Utility Regulatory Commission Comments at 4 (stating that consumers need service quality data from all carriers providing local exchange service in the area). Pursuant to section II.E. *supra*, the IURC has authority to require this information from carriers that provide local service within the state. The entire industry, CLECs as well as ILECs, should not be burdened with providing such information on a national level.

[21] *See* Public Utilities of Ohio Comments at 9 ("unless the customer is provided a relatively available basis for comparison of the information, any information provided only by the ILEC will be relatively useless"); SBC Communications, Inc. ("SBC") Comments at 2;

agrees with the Commission regarding this report and applauds its proposed elimination by the Commission. The Commission should also eliminate ARMIS report 43-05. This report is no longer used for its intended purpose and the proposed streamline version will not serve the purpose suggested in the *Notice*, which is to provide consumers with information in order to choose between service providers. The Commission should therefore eliminate 43-05 because it is no longer necessary to serve the public interest.

Respectfully submitted,

BELLSOUTH CORPORATION

By: /s/ Stephen L. Earnest
Stephen L. Earnest
Richard M. Sbaratta

Its Attorney

BellSouth Corporation
Suite 4300, 675 West Peachtree Street
Atlanta, Georgia 30375
(404) 335-0711

Date: February 16, 2001

Verizon Comments at 4 – 5 ("ARMIS reports are not suited to providing useful consumer information in a competitive market").

CERTIFICATE OF SERVICE

I do certify that I have this 16th day of February 2001 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing and/or by placing a true and correct copy of the same in the Untied States Mail, postage prepaid, addressed to the parties listed on the attached service List.

/s/ Juanita H. Lee
Juanita H. Lee

Service List CC Docket No. 00-229

Paul E. Dorin
Roger K. Topins
Paul Mancini
SBC Communications, Inc.
1401 I Street, N. W., Room 1100
Washington, DC 20005

Mark C. Rosenblum
Richard H. Rubin
James W. Grudus
AT&T Corporation
295 North Maple Avenue
Basking Ridge, NJ 07920

James L. Casserly
AT&T Corporation
Mintz, Levin, Cohen, Glosky
and Popeo, P.C.
701 Pennsylvania Avenue, N. W.
Washington, DC 20004

I**ndiana Utility Regulatory Commission**
Indiana Government Center South
302 West Washington Street
Suite E306
Indianapolis, IN 46204

Sharon J. Devine
Kathryn Marie Krause
James T. Hannon
QWEST Corporation
Suite 700, 1020 19th Street, N. W.
Washington, DC 20036

Lawrence E. Sarjeant
Linda L. Kent, Keith Townsend
John W. Hunter, Julie E. Rones
United States Telecom Association
Suite 600, 1401 H Street, NW
Washington, DC 20005

Myra Karegianes
Sarah A. Naumer
Thomas G. Aridas
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago, Illinois 60601

Joseph DiBella
Verizon
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

R. Scott Reiter
Marie Guillory
Daniel Mitchell
National Telephone Cooperative Assoc.
4121 Wilson Boulevard, 10th Floor
Arlington, Va 22203

David Svanda
Robert Nelson
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Laurie Pappas, Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
Austin, TX 78701

Scott C. Lundquist
Sarah C. Bosley
Texas Office of Public Utility Counsel
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108

Betty Montgomery
Duane Luckey
Jodi Jenkins Bair
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

James Bradford Ramsay
Sharla Barklind
National Association of Regulatory Utility Commissioners
1101 Vermont Avenue, NW, Suite 200
Washington, DC 20005

George N. Barclay
Michael J. Ettner
General Services Administration

1800 F Street, NW, Room 4002
Washington, DC 20405

Snavely King Majoros O'Connor & Lee, Inc.
General Services Administration
1220 L Street, NW, Suite 410
Washington, DC 20005

Richard Metzger
Pamela Arluk
Focal Communications Corporation
7799 Lessburg Pike
Suite 850 N
Falls Church, VA 22043

David N. Baker
Vice President, Law and Public Policy
EarthLink, Inc.
1430 West Peachtree Street, N. W
Suite 400
Atlanta, GA 30309

Donna N. Lampert
Mark J. O'Connor
EarthLink, Inc.
Lampert & O'Connor, P.C.
1750 K Street, NW, Suite 600
Washington, DC 20006

David W. Zesiger
The Independent Telephone & Telecommunications Alliance
1300 Connecticut Avenues, N.W.
Suite 600
Washington, DC 20036

Karen Brinkmann
Richard R. Cameron
Benoit Jacqmotte
Independent Telephone & Telecommunications Alliance
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004

Kimberly M. Kirby
Jonathan Askin
Association for Local Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, DC 20006

Jason Oxman
Covad Communications Company
600 14th Street, NW
Washington, DC 20005

Genevieve Morelli
David C. Kirschner
Competitive Telecommunications Assoc., E.Spire, KMC Telecom Inc., XO Communications, Inc., NET2000 Communications, Inc. Z-Tel Comm. Ir
Kelly Drye & Warren LLP
1200 19th Street, N.W
Washington, DC 20036

Cynthia B. Miller
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0872

Mark C. Rosenblum
Richard H. Rubin
James W. Grudus
AT&T Corporation
295 North Maple Avenue
Basking Ridge, NJ 07920

James L. Casserly
AT&T Corporation
Mintz, Levin, Cohen, Glosky
And Popeo, P.C.
701 Pennsylvania Avenue, NW
Washington, DC 20004

Kathleen F. O'Reilly
National Association of State of Consumer Advocates
414 "A" Street, Southeast
Washington, DC 20003

Kenneth Peres
Debbie Goldman
George Kohl
Communications Workers of America
501 3rd Street, N.W.
Washington, DC 20001

Pat Wood, III
Judy Walsh
Brett A. Perlman
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326

Lawrence E. Harris
Terri B. Natoli
Edward B. Krachmer
TELIGENT, INC.
Suite 400
8065 Leesburg Pike
Vienna, Va 22182

Susan J. Bahr
Law Office of Susan Bahr, PC
Rural Local Exchange Carriers
P. O. Box 86089
Montgomery Village, MD 20886-6089

Alan Buzacott
WORLDCOM, INC.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

+Magalie Romas Salas
Office of the Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
TW-A325
Washington, DC 20554

+**International Transcription Service**
The Portals, 445 Twelfth Street, SE
Suite CY-B400
Washington, DC 20554

+ VIA ELECTRONIC FILING